

§ 843.18 Inability to comply.

(a) No cessation order or notice of violation issued under this part may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under part 845 of this chapter and of the duration of the suspension of a permit under § 843.13(c).

§ 843.20 Compliance conference.

(a) A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of section 517 of the Act and § 842.11.

(b) The Office may accept or refuse any request to conduct a compliance conference under paragraph (a). Where the Office accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.

(c) The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act of any applicable permit or exploration approval.

(d) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the Office or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

§ 843.21 Procedures for improvidently issued State permits.

(a) *Initial notice.* If we, OSM, on the basis of any information available to us, including information submitted by any person, have reason to believe that a State-issued permit meets the criteria for an improvidently issued permit under § 773.21 of this chapter, or the State regulatory program equivalent, and the State has failed to take appropriate action on the permit under the State regulatory program equivalents of §§ 773.21 through 773.23 of this chapter, we must—

(1) Issue a notice, by certified mail, to the State, to you, the permittee, and to any person providing information under paragraph (a) of this section. The notice will state in writing the reasons for our belief that your permit was improvidently issued. The notice also will request the State to take appropriate action, as specified in paragraph (b) of this section, within 10 days.

(2) Post the notice at our office closest to the permit area and on the AVS Office Internet home page (Internet address: <http://www.avs.osmre.gov>).

(b) *State response.* Within 10 days after receiving notice under paragraph (a) of this section, the State must demonstrate to us in writing that either—

(1) The permit does not meet the criteria of § 773.21 of this chapter or the State regulatory program equivalent;

(2) The State is in compliance with the State regulatory program equivalents of §§ 773.21 through 773.23 of this chapter; or

(3) The State has good cause for not complying with the State regulatory program equivalents of §§ 773.21 through 773.23 of this chapter. For purposes of this section, good cause has the same meaning as in § 842.11(b)(1)(ii)(B)(4) of this chapter, except that good cause does not include the lack of State program equivalents of §§ 773.21 through 773.23 of this chapter.

(c) *Notice of Federal inspection.* If we find that the State has failed to make the demonstration required by paragraph (b) of this section, we must initiate a Federal inspection under paragraph (d) of this section to determine if your permit was improvidently issued under the criteria in § 773.21 of this

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chapter or the State regulatory program equivalent. We must also—

(1) Issue a notice to you and the State by certified mail. The notice will state in writing the reasons for our finding under this section and our intention to initiate a Federal inspection.

(2) Post the notice at our office closest to the permit area and on the AVS Office Internet home page (Internet address: <http://www.avs.osmre.gov>).

(3) Notify any person who provides information under paragraph (a) of this section that leads to a Federal inspection that he or she may accompany the inspector on any inspection of the minesite.

(d) *Federal inspection and written finding.* No less than 10 days but no more than 30 days after providing notice under paragraph (c) of this section, we will conduct an inspection and make a written finding as to whether your permit was improvidently issued under the criteria in §773.21 of this chapter. In making that finding, we will consider all available information, including information submitted by you, the State, or any other person. We will post that finding at our office closest to the permit area and on the AVS Office Internet home page (Internet address: <http://www.avs.osmre.gov>). If we find that your permit was improvidently issued, we must issue a notice to you and the State by certified mail. The notice will state in writing the reasons for our finding under this section.

(e) *Federal enforcement.* If we find that your permit was improvidently issued under paragraph (d) of this section, we must—

(1) Issue a notice of violation to you or your agent consistent with §843.12(b) of this part and provide opportunity for a public hearing under §§843.15 and 843.16.

(2) Issue a cessation order to you or your agent consistent with §843.11(c), if a notice of violation issued under paragraph (e)(1) is not remedied under paragraph (f) of this section within the abatement period, and provide opportunity for a public hearing under §§843.15 and 843.16.

(f) *Remedies to notice of violation or cessation order.* Upon receipt of infor-

mation from any person concerning a notice of violation or cessation order issued under paragraph (e) of this section, we will review the information and—

(1) Vacate the notice or order if it resulted from an erroneous conclusion under this section; or

(2) Terminate the notice or order if—

(i) The violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;

(ii) You or your operator no longer own or control the relevant operation;

(iii) The violation is the subject of a good faith administrative or judicial appeal (unless there is an initial judicial decision affirming the violation, and that decision remains in force);

(iv) The violation is the subject of an abatement plan or payment schedule that is being met to the satisfaction of the agency with jurisdiction over the violation; or

(v) You are pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding (unless there is an initial judicial decision affirming the listing or finding, and that decision remains in force).

(g) *No civil penalty.* We will not assess a civil penalty for a notice of violation issued under this section.

[65 FR 79670, Dec. 19, 2000]

§ 843.22 Enforcement actions at abandoned sites.

The Office may refrain from issuing a notice of violation or cessation order for a violation at an abandoned site, as defined in §842.11(e) of this chapter, if abatement of the violation is required under any previously issued notice or order.

[53 FR 24882, June 30, 1988]

§ 843.25 Energy Policy Act enforcement in States with approved State programs.

(a) *State-by-State determinations.* By July 31, 1995, OSM will determine for each State with an approved State regulatory program whether:

(1) Direct Federal enforcement of the Energy Policy Act and implementing Federal regulations will occur under